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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
08/776,321	04/15/1997	MARIA ANNA WUBBEN	29865	1786

116 7590 05/15/2002

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CLEVELAND, OH 44114-1484

EXAMINER
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SHERRER, CURTIS EDWARD

ART UNIT	PAPER NUMBER
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1761

39

DATE MAILED: 05/15/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No. <b>08/776,321</b>	Applicant(s) <b>Wubben et al.</b>	
Examiner <b>Curtis E. Sherrer</b>	Art Unit <b>1761</b>	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on Dec 21, 2001.
- 2a) ☒ This action is **FINAL**.      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 18, 20-29, 31, and 50 is/are pending in the application.
- 4a) Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 18, 20-29, 31, and 50 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claims \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some\* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\*See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                              | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____  |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)          | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____ | 6) <input type="checkbox"/> Other:  |

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### Part III DETAILED ACTION

#### *Claim Rejections - 35 USC § 112*

1. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

2. Claims 18, 20-29, 31 and 50 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Applicants have amended their claims to exclude organic solvent extraction and, while the specification teaches the ineffectiveness of using ethanol and hexane, it does not teach 1) the ineffectiveness of all organic solvents or 2) the ineffectiveness of organic solvents at any and all concentrations.

3. It is noted that Hoelle et al. teach that pectin is present in spent hops that have been extracted with trichloroethylene. Further they teach that "recovery of water-soluble components [such as pectin] be carried out in vacuum and at temperatures as low as are possible" to minimize degradation. (Col. 5, lines 5-10). Therefore, it appears that processing of pectin is dependent on more than just the solvent.

#### *Claim Rejections - 35 USC § 103*

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 18, 20-29, 31 and 50 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Bukovskii et al. for the reasons set forth in the last Office Action

6. Claims 18, 20-29, 31 and 50 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Bukovskii et al in view of The Practical Brewer and in further view of Food Colloids (pp. 418-35) for the reasons set forth in the last Office Action.

***Response to Arguments***

7. Applicant's arguments filed 12/21/01 have been fully considered but they are not persuasive.

8. Due to applicants' amending of the claims, the rejection based on Hoelle et al. alone has been withdrawn.

9. Applicants state that the "data set forth in the [Declaration] clearly shows that the hop pectin provides much better foam improvement than the beet pectin . . . [and the] numbers are dramatic, significant, surprising and unexpected." In reviewing the data set forth in the declaration it is seen that hop pectin B provides for a foam improvement of 32% while the beet pectin provides for 14%. Looking at hop pectin A, this provides for an improvement of 15%, and when considering the standard deviation of the data, and therefore is the same as beet pectin. Therefore, the only improvement that might be considered unobvious is that of hop pectin B.

10. Hop pectin B is prepared with an extra acidic alcohol washing. This provides for increased purity by decreasing “the amount of non pectin components.” (§ 4). Hop pectin B was also prepared from CO<sub>2</sub> extracted hop residues, and this is embodied in part (b) of independent claim 18. It is possible the declared results are due to the increased purity, due to the extra washing and therefore this step is critical. This step is not claimed. In conclusion, the claimed invention is broader in scope than that which is disclosed by the data.

11. Further, the pectin are being added to a finished beer rather than as broadly claimed at any time during the brewing process. Again, the claimed invention is broader in scope than that which is disclosed by the data.

12. Further, the amount of pectin being added appears critical. See page 21 of specification, Annex 3. This data shows that commercial pectin provides better foam improvement over all of the hop pectins.

### *Conclusion*

13. No claim is allowed.

14. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period

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will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

15. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Curtis Sherrer whose telephone number is (703) 308-3847. The examiner can normally be reached on Tuesday through Friday from 6:30 to 4:30. The fax phone number for this Group is (703)-305-3602.

16. Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 308-0651.



Curtis E. Sherrer  
Primary Examiner  
May 14, 2002